United Nations CCPR/C/SR.2886

International Covenant on Civil and Political Rights

Distr.: General
4 January 2013

Original: English

Human Rights Committee
104th session

Summary record of the first part (public)* of the 2886th meeting
Held at Headquarters, New York, on Tuesday, 27 March 2012, at 3 p.m.

Chairperson: Ms. Majodina

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.2886/Add.1.

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The meeting was called to order at 3.10 p.m.

Follow-up to concluding observations on State reports and to Views under the Optional Protocol (*continued*) (CCPR/C/104/R.4/Add.6)

Follow-up on individual communications under the Optional Protocol

1. **Mr. Thelin** said that it had been brought to his attention that the author in the case of *J.O. v. France* (Communication No. 1620/2007) had been referred to by his initials in the case name, but that his full name appeared later in the text. The text should be changed so that the full name was not revealed. The footnote reference should be redrafted to clarify that the compensation of 40,000 euros had been paid to the author after successfully suing his lawyer, and not by the State party.

2. Turning to the case of *Georgopoulos v. Greece* (Communication No. 1799/2008), he noted that the State party had indicated in its reply that it had initiated proceedings against the mayor of Patras for the destruction of the Roma community, and that the author would be able to seek monetary compensation in the courts. Furthermore, a full programme had been instituted to protect Roma residents from future violations.

3. In the case of *Haraldsson and Sveinsson v. Iceland* (Communication No. 1306/2004), the State party had presented new bills aimed at increasing the possibilities for participation in the system for fisheries management, one of the cornerstones of the local economy, hence the contentious nature of the issue. The State party's reference to the independence of the judiciary in response to the question of its failure to implement the Committee's Views was unhelpful. Although dialogue with the State party was ongoing, the Committee's recommendation had not been satisfactorily implemented.

4. **Mr. O'Flaherty**, recalling his two previous requests to close the file regarding Iceland's review of its fisheries management system, pointed out that the State party had indeed reviewed the system, as the Committee had asked it to, and that the Committee had agreed to close the case each time he had raised the issue.

5. **Mr. Iwasawa** confirmed that Mr. O'Flaherty had taken the floor on three occasions to request that the case be closed and said that he agreed that the Committee should once again move to do so.

6. **Mr. Thelin** said that he agreed that the file should be closed with a finding of partial fulfilment, since the compensation recommended in the remedy had not yet been paid. The Committee would have time to consider the issue further, as the State party was due for examination at the Committee's next session.

7. Turning to Kyrgyzstan, he noted that references in the individual cases to the anticipated meeting with the State party, a meeting that unfortunately had not come to pass, would have to be deleted. In the case of *Krasnov v. Kyrgyzstan* (Communication No. 1402/2005), the State party had reiterated its previous observations and was rearguing the case; the author should have an opportunity to comment, and the Committee should find that the dialogue was ongoing and that the recommendation had not been satisfactorily implemented. The case of *Toktakunov v. Kyrgyzstan* (Communication No. 1470/2006) should be closed with a finding of satisfactory implementation. It was too early to close the case of *Akhadov v. Kyrgyzstan* (Communication No. 1503/2006), on which the follow-up dialogue was ongoing, but the Committee should find that its recommendation had not been satisfactorily implemented. In the case of *Gunan v. Kyrgyzstan* (Communication No. 1545/2007), the State party's observations submitted in December 2011 merely reaffirmed the views previously presented to the Committee, indicating that it had no intention of implementing the Committee's recommendation. The Committee should therefore await the author's reaction and note that dialogue was ongoing and that the recommendation had not been satisfactorily implemented. Regarding the case of *Moidunov, Zhumabaeva v. Kyrgyzstan* (Communication No. 1756/2008), the State party had also reiterated its previous position in the information it had recently submitted to the Committee, leaving the latter to forward that information to the author. It should find that the dialogue was ongoing and that the recommendation was not being implemented.

8. **Mr. Neuman** said that he wondered whether the scope of the follow-up in the case of *Toktatunov v. Kyrgyzstan* related only to the individual measures to be taken in respect of the author or also to the general recommendation about taking all necessary measures to guarantee the accessibility of information on death penalty sentences imposed in Kyrgyzstan. As he

understood it, the fact that the individual measure had been taken did not necessarily mean that the general reform recommended by the Committee had been undertaken.

9. **Mr. Thelin** said that the measures taken by the State party were not general enough to find that it had complied fully with the entire remedy proposed by the Committee. He was, however, open to a more positive reading.

10. **Mr. Petrov** (Office of the High Commissioner for Human Rights) said that consideration of that aspect of the case became hypothetical since the death penalty had been abolished in Kyrgyzstan. The time frame of the case fell within the last month when death penalty cases could arise.

11. **Mr. Thelin** said that the clarification supported his call for a positive finding on the State party, as did the fact that the information, by virtue of having been disseminated to the State party, was in the public domain already.

12. Regarding the case of *Sharma v. Nepal* (Communication No. 1469/2006), the State party had informed the Committee that it had paid the author twice as much in compensation as it usually paid the families of victims of disappearances, and that the troubled legacy of the civil war period was being addressed through constitutional review and under the future post-conflict Disappearances and Reconciliation Commissions mechanisms. The author had received the information from the State party but insisted that the Committee's Views had not been implemented. The Committee should find the dialogue to be ongoing while maintaining that the recommendation had not been satisfactorily implemented.

13. The salient point of the *Giri v. Nepal* case (Communication No. 1761/2008) was the State party's decision to provide the author and his family with interim compensation for the violation of their rights, to be determined by the Council of Ministers, in addition to paying them 150,000 Nepalese rupees. The Committee should note that dialogue was ongoing and that the State party was taking steps towards implementing the recommendation.

14. In the case of *Sobhraj v. Nepal* (Communication No. 1870/2009), the State party had reiterated its earlier submissions in December 2011 and explained that a retrial was not possible because Supreme Court decisions were final. In February 2012, the author's counsel had also reiterated her previous submissions and noted that the review petition to the Supreme Court had been refused because it had not been written in Nepalese, which had put her at a great disadvantage; meanwhile, her husband remained in detention. The dialogue was ongoing, and the Committee's recommendation was not being satisfactorily implemented at the current stage.

15. With regard to the case of *Correia de Matos v. Portugal* (Communication No. 1123/2002), the State party's recent submission reminded the Committee that the European Court of Human Rights had found that the author's rights had not been violated, highlighting the fact that it faced conflicting decisions on the case from two international instances. Upon receipt of the State party's submission, the author had made references to relevant international instruments and claimed that the State party had not executed its obligations in good faith. The Committee should therefore note that the State party had not implemented the Committee's recommendation and that the dialogue was ongoing.

16. **Mr. Flinterman**, noting that the case had been before the Committee for six years, said that he would not be surprised if the Special Rapporteur concluded that it should be closed and taken up during the forthcoming examination of the State party's periodic report. It might not have been necessary to transmit the author's slightly dubious comments to the State party.

17. **Mr. Kälin**, in response to the Special Rapporteur's suggestion that the State party was in a difficult situation because of two conflicting decisions, stressed that the decisions were not conflicting per se. The European Court of Human Rights had ruled that Portugal was not obliged to make exception from the rule of compulsory representation under the European Convention on Human Rights. Under the Covenant, however, the Committee was to decide on exceptions from that rule. Since the State party's argument regarding the supposed conflict was unconvincing, it might not make sense to close the case at that point.

18. **Mr. Salvioli** said that there was no contradiction since the European Court of Human Rights and the Committee enforced the implementation of different legal instruments, the European Covenant on Human Rights and the Covenant, respectively. While the Court may not find the State party guilty of a violation under

the European Covenant, the State party was still required to acknowledge the Committee's finding of violations of the Covenant and comply with the treaty body's decision.

19. **Mr. Iwasawa** said that the European Court of Human Rights and the Committee had been exchanging views on jurisprudence in general and would continue to do so.

20. **Mr. Thelin** said that he wished to clarify that it had been the State party, not he, who believed there was a conflict. The Committee would have an opportunity to pursue the matter directly with Portugal at its fall 2012 session.

21. Dialogue in the case of *Min-Kyu Jeong et al. v. the Republic of Korea* (Communications No. 1642-1741/2007) remained ongoing, as the State party had not taken the steps to effectuate the remedy but had published the Committee's Views. For their part, the authors claimed that the State party did not intend to give effect to the Committee's Views, and that the problem of Jehovah's Witnesses' refusal to perform compulsory military service on the grounds of conscientious objection, the crux of the case, would persist. The Committee had sent the counsel's submission to the State party for comments earlier that month. The Committee's recommendation had not been satisfactorily implemented to date.

22. Turning to the case of *Pustovalov v. the Russian Federation* (Communication No. 1232/2003), he said that the Committee's Views remained unimplemented, hence the need to note the unsatisfactory implementation of the recommendation.

23. In the case of *Khoroshenko v. the Russian Federation* (Communication No. 1304/2004), the dialogue should be considered ongoing, but, in light of the State party's failure to implement the Committee's recommendations and of the refusal by the General Prosecutor's Office and the Supreme Court to reconsider the author's case, the Committee should find that the recommendation had not been satisfactorily implemented.

24. In the case of *Yevdokimov and Riazanov v. Russian Federation* (Communication No. 1410/2005), the Committee's Views had not been published, nor had any effort been made to implement them. According to the author, prisoners had been unable to vote in a recent round of parliamentary elections. The Committee should therefore arrive at a finding of unsatisfactory implementation of the recommendation while the case remained ongoing.

25. In the case of *Novakovic v. Serbia* (Communication No. 1556/2007) the State party's submission of August 2011 had reminded the Committee that there were hearings pending before the First Instance Court of Belgrade and that measures had been undertaken to translate and publish the Committee's Views. The author's submission, also dated August 2011, had expressed displeasure with the State party's actions, noting that mechanisms to implement the Committee's recommendations were lacking and that no implementation had been forthcoming. The Committee should consider the dialogue ongoing, while noting the unsatisfactory implementation of the recommendation.

26. With regard to Tajikistan, he proposed that the Committee should deal with the 15 cases contained in the report summarily, as they all pertained to very similar violations and as the State party had not found the Committee's Views to be valid, claiming that no violations had taken place and simply rearguing each case in its submissions to the Committee. The Committee should suspend follow-up dialogue and conclude that its recommendations, which were also strikingly similar from case to case, had not been satisfactorily implemented.

27. **Mr. Fathalla** asked what the procedure for suspension involved, and whether it would preclude a resumption of the dialogue with the State party.

28. **Mr. Thelin** said that in cases where recommendations had been found by the Committee to have been unsatisfactorily implemented, a formal finding to close the case would preclude the State party concerned from returning to the case at hand. The more lenient approach would be to suspend the dialogue, leaving open the possibility of reopening it should circumstances warrant. The Committee had three options with regard to States parties, namely a finding that the follow-up dialogue was ongoing and that the recommendations had been partially implemented, that the dialogue had been closed as a result of non-compliance, and suspension with the possibility of resumption. All of the cases concerning Tajikistan had been grouped under the third option.

29. **Ms. Chanet** said that she wished to know how the Committee would ensure that it did not lose sight of such cases.

30. **Mr. Flinterman** requested clarification whether in the case of Tajikistan, where the proposal had been to close the follow-up dialogue, followed by a recommendation to suspend the dialogue, the case in fact involved a closure or a suspension.

31. **Mr. Iwasawa** said that the new formulation of noting that a follow-up dialogue was ongoing while stipulating that the Committee's recommendations had not been fully implemented was the correct approach.

32. **Mr. Salvioli** said that the communication in question underscored the difficulties the Committee faced in determining exactly how far it could go in following up its own decisions, and he wished to know what more it could do in cases involving non-compliance by States parties.

33. **Mr. O'Flaherty** said that one practical and immediate step to strengthen the follow-up process would be for the Office of the High Commissioner for Human Rights to include references to individual communications, where relevant, in the compendium of United Nations materials made available to the Human Rights Council. In addition, the Dublin outcome document reflected a number of recent discussions on how the follow-up to individual communications could be enhanced, suggesting that the historical neglect of those dimensions in the broader discussions on how to strengthen the treaty bodies had now largely been redressed.

34. **Ms. Waterval**, referring to the case of *Kirpo v. Tajikistan* (Communication No. 1401/2005), in which the State party had confirmed that it had released the author, asked why that outcome had not been considered satisfactory.

35. **Mr. Thelin** said that suspended cases would not be lost sight of; there would be a table annexed to the Committee's report in which all cases would be listed and grouped around the three criteria, including suspensions. With respect to the case of *Karimov, Askarov, Davlatov v. Tajikistan* (Communication No. 1108/2002 and 1121/2002), Mr. Davlatov was deceased and the last sentence in the last paragraph should therefore read "its recommendation concerning the two other victims", reflecting the fact that his case was now closed. With regard to the case of Mr. Kirpo, the State party had indicated that he had been released for reasons other than as a result of the Committee's recommendation; therefore the State party should not be credited with compliance.

36. Turning to the concluding observations on the Philippines, he said that in the first case, *Rousse v. Philippines* (Communication No. 1089/2002), the remedy was compensation for the author's detention and imprisonment. There had not been any previous information from the State party, and the author had informed the Committee that the State party had not given any effect to its views. The dialogue was therefore ongoing and it had been noted that the recommendation had not been satisfactorily implemented.

37. The second case, *Pimentel et al. v. Philippines* (Communication No. 1320/2004), related to compensation with respect to the amount of the filing fee. The author indicated that there had not been any resolution, and the Committee had suspended the dialogue with a finding of an unsatisfactory implementation of its recommendation.

38. In the third case, *Larranaga v. Philippines* (Communication No. 1421/2006), the remedy was commutation of the author's death sentence and early consideration for release on parole. The author had already been extradited to Spain, and the death sentence had already been commuted to life imprisonment. Therefore, the remedy of release on parole would have to be negotiated between the States parties. He suggested that the dialogue should be continued while noting that there had been partial compliance.

39. Turning to the concluding observations on Ukraine, he said that in the case *Shchetka v. Ukraine* (Communication No. 1535/2006), the remedy was a thorough investigation into allegations of torture and ill-treatment, the initiation of criminal proceedings against those responsible, a retrial in conformity with the guarantees under the Covenant or the release of the author and the payment of reparations. There had not been any previous follow-up information.

40. The State party had not implemented the Committee's recommendations, and the dialogue was therefore ongoing with a notation as to the non-satisfactory implementation of the recommendation.

41. The case *Chongwe v. Zambia* (Communication No. 821/1998) was an old one dating back to October 2000. The recommendation had been to protect the

author's life and security from threats, to conduct a thorough investigation of the shooting incident at the heart of the case, and to award damages. In the previous follow-up information the author had informed the Committee that there had been domestic political developments following elections in September 2011 which could be beneficial to him. The Committee therefore would not suspend the follow-up dialogue but would note that the recommendations had not been fully implemented.

42. **Mr. O'Flaherty** said that with regard to the final paragraph of the report, it was important that no non-governmental organization should be presented as having a privileged position in the context of the Committee's relations with States parties.

The meeting was suspended at 4.18 p.m. and resumed at 4.30 p.m.

Working methods (*continued*)

Position of the Human Rights Committee on the treaty body strengthening process

43. **Mr. Flinterman** introduced the paper entitled "Position of the Human Rights Committee on the treaty body strengthening process", which had been circulated to the members of the Committee.

44. **Ms. Chanet** sought clarification as to the status of the paper, because she had thought that it would present a summary of the Committee's discussions on the outcome document entitled "Strengthening the United Nations Human Rights Treaty Body System" (Dublin II document). However, as it addressed several other issues that were not germane to Dublin II, it could hardly be called a position paper on Dublin II.

45. **Mr. Flinterman** said that it was only a working document that could form the basis of a final position paper.

46. **Mr. Iwasawa** said that although the paper still needed further refinement, it was a fair representation of the Committee's practice in the light of the recommendations in the Dublin II outcome document. He would, however, replace the locution "the Committee could implement ..." used in some subheadings with "the Committee will implement ...".

47. **Mr. O'Flaherty** said that although its status was still unclear, the paper served as a good basis for discussion. In paragraph 1 of the paper, it was not helpful to characterize the reflection exercises being conducted by the Office of the High Commissioner for Human Rights and the General Assembly as two separate processes, because that gave the impression that those were two competing processes, rather than two initiatives that had the shared goal of strengthening the treaty body system.

48. The minority views expressed by some States in the Dublin II outcome document, including the suggestion that a code of conduct should be adopted for treaty body members, and the questioning of the treaty bodies' practice of drafting general comments, should not have been given undue prominence in the paper. In paragraph 3 (a), the list of stakeholders should include national human rights institutions and non-governmental organizations.

49. The paper made certain claims about Dublin II that were the inconsistent with the outcome document. For instance, paragraph 3 (e) stated that the recommendations in the outcome document did not amount to a solution to the main problems faced by the Committee. However, the Dublin II document never claimed to be anything but an effort by a group of experts to see what was feasible at a given moment in time, recognizing that the work was ongoing. The paper noted that the Dublin II document did not provide a solution, in part because more resources would be required. Yet, that document itself had recognized that additional resources would be needed to implement some of its recommendations. The paper noted that the recommendation calling for a possible two-term restriction would necessitate a legislative amendment. Yet, that recommendation would only entail a possible reflection on practice and not a change to rules, and it was only directed at States parties, not treaty bodies.

50. He suggested adding one final paragraph to the paper to indicate that reflection on the treaty body strengthening process would remain a standing item of the Committee's working methods, to which it would return if and when necessary.

51. **Mr. Thelin** said that although the paper required further improvement, it was a good discussion document. The section dealing with individual communications included some of the elements that had been raised in the report of the expert meeting on communications held in Geneva on 29 October 2011 within the framework of the treaty body strengthening

process. He agreed that civil society should be included among the stakeholders in the process. However, all references to the Office of the High Commissioner for Human Rights should be changed to "the Secretary-General/Office of the High Commissioner for Human Rights", because the Committee's constituent treaty and rules of procedure referred to the Secretary-General and not the High Commissioner.

52. He agreed with Mr. Iwasawa that the statement that "the Committee could implement the following recommendations immediately" was too abrupt; it was better to state that "the Committee could consider implementing the following recommendations immediately". The recommendations concerning individual communications should be combined with those of the report of the expert meeting on communications held in Geneva on 29 October 2011 and presented in a separate section.

53. **Mr. Neuman** said that it was his understanding that the subheadings for the various sections of the paper were meant to reflect the recommendations that the Committee had already implemented; those for which it had the authority and resources to implement; those for which it had the authority but not enough resources to implement; and those that were beyond its mandate. In his view, the statement that "the Committee could implement the following recommendations immediately" did not refer to recommendations that the Committee could implement the following day, but to recommendations that it could implement under its existing authority.

54. **Mr. Thelin** suggested moving the segment on individual communications (paragraph (d) on page 2), which seemed to require a change to the rules of procedure, to point 6, which dealt with recommendations that would require an amendment to the rules of procedure or other legislative measures for their implementation.

55. **Mr. Flinterman** said that Mr. Neuman had properly captured the rationale behind his categorization of the different sections. Nonetheless, he looked to the Chairperson for guidance on the way forward.

56. **Ms. Chanet** said that it was not enough simply to deal with the technical aspects of the paper without considering its political ramifications. In the light of the highly sensitive treaty body strengthening exercise, and for strategic and tactical reasons, it was simply too risky for the Committee to state that there were two separate processes under way.

57. **Mr. O'Flaherty** suggested that Mr. Flinterman should consider the various views expressed and prepare a second draft of the paper for further discussion.

58. **Mr. Rivas Posada** said that all three paragraphs under the subheading entitled "The Committee could implement the following recommendations but it would necessitate additional resources and assistance from third parties (the OHCHR, other TBs)" were highly controversial. Even if that subheading was reworded, as Mr. Thelin had suggested, to "The Committee could consider implementing ...", it would still give the impression that a lack of resources was the only obstacle to the Committee implementing those recommendations. However, the Committee had still not reached a firm position on those topics.

59. **Mr. O'Flaherty** said that, for the time being, the Committee could simply state that the items under that subheading were elements of the Dublin II recommendations that the Committee was competent to consider.

60. **Mr. Salvioli** said that the Committee should merely state that it took note of the general thrust of the Dublin II recommendations, bearing in mind that some of them raised many political concerns.

61. **Mr. Neuman** suggested that the section dealing with recommendations that the Committee had already implemented could be rewritten to highlight the Committee's accomplishments in the treaty body strengthening exercise. In the section dealing with recommendations which the Committee could implement if it had additional resources, rather than providing a comprehensive list of items, the paper could simply give a few examples of recommendations that the Committee could implement within its existing resources, and a few others examples of recommendations that it found attractive and could implement if it had the resources.

62. **Mr. Iwasawa** said that the draft paper was a useful discussion document but it was unclear whether the Committee intended to use it to produce a public statement or even an official policy paper. The Committee had asked Mr. Flinterman simply to summarize its discussions on the different treaty body strengthening processes prior to its meeting with the Director of the Human Rights Treaties Division.

63. **Ms. Chanet** said that she understood that the draft paper would be used as preparation for the discussions with the Director; however the Committee would also be asked for its opinion during the consultations with States parties on 2 and 3 April 2012. The Committee must identify its position and draft a document accordingly. The draft paper should refer solely to the Committee's opinion on the Dublin outcome document and not refer to other treaty body strengthening process. Paragraph 3 (b) provided an implicit reply to the concerns raised by the States parties and so could be left in, as could paragraph 3 (c) and the reference to general comments. The work of the General Assembly could be referred to in a concluding paragraph. The draft could be revised before the meeting with the Director to enable the Committee to define a common position.

64. **Mr. Thelin** said that the draft paper served more than one purpose and could form the basis for a public position paper on the different treaty body strengthening processes. He suggested that a second draft paper should be prepared along the lines outlined by Mr. Neuman and Ms. Chanet, using different subheadings for the different groups of recommendations and including paragraphs 3 (b) and (c), as they concerned the Committee's mandate.

65. **Mr. O'Flaherty** suggested that most of the paragraphs on the first page could be deleted and the new draft paper could start with a reworking of paragraph 3 (e). The categorization of the recommendations could be amended to reflect those that the Committee considered to be non-controversial or was already implementing, such as collaboration with other human rights mechanisms, and those that the Committee could examine in due course without prejudice to an eventual decision. Paragraph 6 (a) should be deleted as the recommendation was not aimed at the Committee; a final paragraph could be added stating that the Committee agreed to remain seized of the matter and would engage with it wherever necessary and appropriate.

66. **Mr. Thelin** said that the issues covered in paragraphs 3 (b) and (c) should be included in the second draft paper, to be used as the basis for a formal position paper. The Committee should not lose sight of its mandate.

67. **Mr. Iwasawa** asked whether the revised document would be adopted or simply used as the basis for a future formal position paper.

68. **Mr. O'Flaherty** said that he had understood that the Committee would adopt a formal position paper, containing no more and no less than what had been agreed during the discussion.

69. **The Chairperson** said that the paper would need to be revised further before the Committee was in a position to adopt it formally.

The public part of the meeting rose at 5.40 p.m.